

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
v.	)	OCAHO Case No. 98A00022
	)	
GOLDEN TOUCH MANUFACTURING	)	Judge Robert L. Barton, Jr.
AND FINISHING, INC. D/B/A	)	
GOLDEN TOUCH MANUFACTURING	)	
AND FINISHING, INC. D/B/A	)	
GOLDEN TOUCH MFG, INC.,	)	
Respondent.	)	

**ORDER DISMISSING PROCEEDING WITHOUT PREJUDICE AND  
CERTIFYING ORDER TO CHIEF ADMINISTRATIVE HEARING OFFICER**  
(November 18, 1997)

As per this date, this new case was assigned to me. Included with the complaint is a letter from the INS' counsel dated October 28, 1997, addressed to Judge (sic) Jack E. Perkins stating, among other things, that the respondent was issued a Notice of Intent to Fine and "has filed a timely request for hearing."<sup>1</sup> However, contrary to the October 28 letter, there is no request for hearing in the record. On my copy of the letter, there is a cryptic note, in red ink, which states "[p]er CTC staff, consider Ans. to Complaint, Filed w/INS as Req. for Hearing" with the initials zw.

Attached to the complaint is a copy of the Notice of Intent to Fine (NIF), which apparently was served on Respondent on September 23, 1997, and a copy of a document submitted by Respondent entitled Answer to Complaint Regarding Unlawful Employment and Paperwork Violations ("Answer"), which is dated October 7, 1997.<sup>2</sup>

In United States v. Hailey's J.P. D/B/A Colorado Rosie's, Case No. 95A00041, there also

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<sup>1</sup> Mr. Perkins is not a Judge, but rather is the Chief Administrative Hearing Officer (CAHO).

<sup>2</sup> This document is not an answer to the complaint, because the complaint in this case was dated October 28, 1997. Rather, it appears to be a response to the NIF.

was no request for hearing. Rather, in that case, the respondent's counsel had filed a letter dated November 23, 1994, which, like here, responded to the charges in the NIF, but did not specifically request a hearing. The case was assigned to Judge Joseph McGuire who, on July 10, 1995, issued a Decision and Order, which the CAHO, in an unpublished decision, then vacated on August 4, 1995, because no request for hearing had been filed.<sup>3</sup> In the CAHO's decision, he stated that "[i]n light of the statutory and regulatory language, it is clear that a request for hearing is a prerequisite to the filing of a complaint by the Immigration and Naturalization Service (INS) for section 1324a violations." The CAHO further noted that the respondent's letter was "misconstrued as an official request for hearing," and it was clear that it could not be so construed.<sup>4</sup> Because there was no request for hearing, the letter was insufficient to comply with the requirements of 8 U.S.C. § 1324a(e)(3) and 28 C.F.R. § 68.7(c). The CAHO concluded that "[t]he absence of a request for hearing is fatal to the complaint."

In the present case, by filing the document entitled an "Answer," Respondent clearly has challenged the NIF and clearly intends to dispute the INS' contentions. However, the "Answer" does not request a hearing, and there is no record that a separate document entitled a request for hearing was submitted. Obviously both the INS and OCAHO docket have construed the "Answer" as a request for hearing. That apparently was true in Hailey as well. But for the CAHO's decision in Hailey, I might be inclined to consider the "Answer" here as an implied request for hearing. However, considering the fact that both Judge McGuire and the parties undoubtedly spent substantial time and effort in the period between the filing of the complaint in Hailey in March 1995 and the rendering of the Decision and Order on July 10, 1995,<sup>5</sup> it would seem prudent and to the advantage of all parties to resolve this issue at an early stage. Therefore, based on the Hailey decision, I am dismissing this case without prejudice, and I am certifying this Order to the CAHO for review pursuant to 28 C.F.R. § 68.53(d)(i).

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of November, 1997, I have served the foregoing Order Dismissing Proceeding Without Prejudice and Certifying Order to Chief Administrative Hearing

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<sup>3</sup> Because OCAHO did not publish either the Judge's Decision and Order, or the CAHO's order vacating the same, these decisions are attached to this Order.

<sup>4</sup> The decision in Hailey did not clarify who misconstrued the letter as a request for hearing. Indeed, the Administrative Law Judge certainly reasonably assumed that a case assigned to him by the CAHO, presumably after initial review by Counsel to the CAHO, met the prerequisites of 8 U.S.C. § 1324a(e)(3) and 28 C.F.R. § 68.7(c).

<sup>5</sup> If the decision in Hailey had occurred after a full evidentiary hearing, instead of on a motion for summary decision, even more time and resources would have been wasted.

Officer on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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